

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 11 1979 hmc

Jack C. Silver, Clerk
U. S. DISTRICT COURT

WALTER L. WARD,)	
)	
Petitioner,)	
)	
vs.)	No. 76-CR-91-C ✓
)	No. 78-C-614-C
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

O R D E R

Petitioner herein moves this Court pursuant to the provisions of Title 28 U.S.C. § 2255 to vacate the sentence imposed by it upon him on November 3, 1976.

The petitioner was charged by indictment in Case No. 76-CR-91 with a violation of Title 18 U.S.C. § 1014, in that he knowingly made a false statement or willfully overvalued property for the purpose of influencing the action of a federally insured bank on a loan application. Petitioner entered a plea of not guilty to the charge, and was convicted by a jury on September 17, 1976. Petitioner's conviction was affirmed on appeal. United States v. Walter L. Ward, No. 76-2099 (10th Cir., April 6, 1978).

The petitioner's motion is based upon newly discovered evidence. The factual basis for the charge against the petitioner was that he pledged a bonded warehouse receipt for 40 net tons of graphitic shist ore as security on a loan, and alleged that the ore contained \$200,000.00 worth of silver, when it in fact contained only trace amounts of silver. The petitioner has recently had an assay performed on the ore which shows that it should produce approximately \$50,000.00 gross revenue per ton of ore, which would give the 40 tons a value of approximately \$2,000,000.00. The assay report dated October 19, 1978 is the newly discovered evidence upon which the petitioner bases his motion. Exhibit

"B". He contends that this newly discovered evidence demonstrates the truth of the statements made on the loan application.

"Newly discovered evidence, in order to establish a basis for granting a § 2255 motion, must meet the following criteria: it must not have been discoverable with reasonable diligence prior to trial; it must be more than impeaching or cumulative; it must be material to the issues involved; and it must be such as would probably produce an acquittal. . . . Additionally, newly discovered evidence must be credible." Steel v. United States, No. 75-1597 (10th Cir., June 8, 1976) (Citations omitted). See also Franklin v. United States, 428 F.Supp. 1184 (E.D. Okla. 1977).


Petitioner's newly discovered evidence does not meet the requirement that it be material to the issues involved. During the course of petitioner's trial, a substantial amount of testimonial and documentary evidence was introduced to establish the value of the subject ore. Given the substantial increase in the value of precious metals over the past two years, and the probable increase in the efficiency of the technology of extracting those metals, the Court has no doubt that petitioner's ore is worth more today than it was five years ago when petitioner applied for the loan. On the other hand, this is exactly why the October 19, 1978 assay report is immaterial. What the ore is worth today proves nothing about the value of the ore in 1973. Furthermore, the truth or falsity of petitioner's representations must be judged in light of the information that was available to him at the time he made those representations. Their truth or falsity cannot be judged retrospectively on the basis of information that is now available to him.

In Steel, supra, the 10th Circuit held that the trial court should have held an evidentiary hearing to test the credibility of the newly discovered evidence. The court in Franklin, supra, held that it was required to hold an evidentiary hearing based upon Steel. However, the Court sees no need for an evidentiary hearing in the instant case. In

both Steel and Franklin, credibility was an issue. Credibility is not an issue here.

For the foregoing reasons, it is therefore ordered that petitioner's motion to vacate sentence is hereby denied.

It is so Ordered this 30th day of January, 1979.


H. DALE COOK
United States District Judge

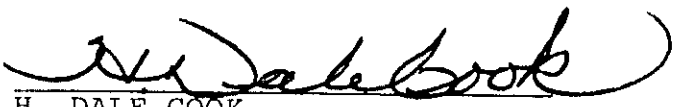
The petitioner also challenges his sentence on the ground that the I.R.S. agents who seized the automobile from him had no authority to do so because he was not the delinquent

taxpayer. He alleges that he was the owner of the automobile, that he had provided the I.R.S. agents proof of his ownership before their seizure of the automobile, and that therefore the agents' failure to secure a warrant to seize the automobile was a violation of the petitioner's Fourth Amendment rights.

A lawful seizure is an essential element that must be alleged and proven when a violation of Section 7212(b) is charged. See United States v. Harris, 521 F.2d 1089 (7th Cir. 1975); United States v. Oliver, 421 F.2d 1034 (10th Cir. 1970); United States v. Scolnik, 392 F.2d 320 (3rd Cir. 1968). So the question of whether the seizure of the petitioner's automobile was lawful or not would be another question relating to the fact of petitioner's guilt, or relating to the sufficiency of the indictment, and would therefore not be a proper ground for a Section 2255 Motion. See Payton v. United States, *supra*.

For the foregoing reasons, it is therefore ordered that the petitioner's motion to vacate sentence is hereby denied.

It is so Ordered this 23rd day of January, 1979.


H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LUTHER HILL, JR.,

Defendant.

No. 70-CR-52

FILED

JAN 24 1979

Jack C. Smith, Clerk
U. S. DISTRICT COURT

O R D E R

Judgment having been entered in the above case
and the case being finalized,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
the United States Court Clerk return to the respective parties
all remaining exhibits in his possession.

[Signature]

U.S. DISTRICT JUDGE

I received Plaintiff's exhibits #1 (jar containing a brown powdery
substance identified by the numbers "68-636" on bottle) & #2 (one
yellow balloon), introduced at trial.

Kenneth P. Snake, AUSA 1-24-79

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
RANDY LEON MANZER, et al.,)
)
Defendant.)

No. 76-CR-98 ✓

FILED

720 JAN 17 1979

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Judgment having been entered in the above case
and the case being finalized,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
the United States Court Clerk return to the respective parties
all remaining exhibits in his possession.

W. J. Lakebook
U.S. DISTRICT JUDGE

Received Plaintiff's exhibits #

- 4 - \$100 cash*
- 5 - \$100 cash*
- 9 - scales*
- 10 - Distone sugar*
- 11 - PDR*
- 16 - Cassette Tape*

Kenneth P. Sucke, AUSA.
1-17-79

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) No. 76-CR-82
)
MICHAEL ALLEN PHILLIPS, et al.)
)
Defendant.)

FILED

JAN 17 1979

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Judgment having been entered in the above case
and the case being finalized,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
the United States Court Clerk return to the respective parties
all remaining exhibits in his possession.

W. Dale Book
U.S. DISTRICT JUDGE

*I received the following Plaintiff's exhibits introduced
in the trial held July 19, 21, 22, 23, & 26, 1976:*

#56, 7 & 8 - all containing methamphetamine

#5 10 & 11 - lab reports (not admitted in trial)

*I also received the following Plaintiff's exhibits introduced
in the trial held Nov. 22 & 23, 1976:*

#1 \$200.00 Cash

#2 \$200.00 Cash

#3 \$480.00 Cash

#4 Methamphetamine

#4A

W. Dale Book, Esq.

1-16-79

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,
vs.
L.G. DAVIS, et al.,
Defendant.

)
)
)
)
)
)
)

No. 74-CR-42

FILED

JAN 17 1979

Jack C. Silver, Clerk
U. S. DISTRICT COURT

ORDER

Judgment having been entered in the above case
and the case being finalized,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
the United States Court Clerk return to the respective parties
all remaining exhibits in his possession.

Carl E. Benner

U.S. DISTRICT JUDGE

I received Plaintiff's Exhibit #1 introduced in the trial.

WHICH CONSISTS OF:

- (A) - 1 BOTTLE MARKED QUAPALVE-150 CONTAINING
3 1/2 TABLETS
- (B) - 1 BOTTLE MARKED TYLENOL CONTAINING
11 TABLETS
- (C) - 1 BOTTLE MARKED LERITINE AMILERIDINE
CONTAINING A LIQUID
- (D) - 1 BOTTLE W/ RUBBER BANDS AROUND
IT CONTAINING 7 WHITE AND 7 BROWN
PILLS

Kenneth R. Snodgrass, Atty SA
1-16-79

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
ROY MILTON BIRMINGHAM, et al)
)
Defendants.)

No. 70-CR-51

FILED

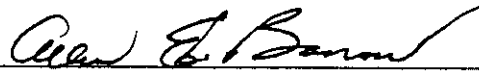
JAN 17 1979

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Judgment having been entered in the above case
and the case being finalized,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
the United States Court Clerk return to the respective parties
all remaining exhibits in his possession.



U.S. DISTRICT JUDGE

I received Plaintiff's Exhibit #1 introduced at trial. CONSISTING
OF ONE WHITE "HOLIDAY INN" ENVELOPE
CONTAINING A RED BALLOON, AND
ONE VIAL CONTAINING A QUANTITY OF
LIGHT BROWN POWDER AND MARKED
"68-662" (LIP MARKED "68-661") - ALL
ENCLOSED IN ONE EVIDENCE ENVELOPE.
Kenneth P. Searles, AUSA.
1-18-79

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT LEE ALEXANDER, et al.,

Defendants.

)
)
)
)
)
)
)

No. 70-CR-50

FILED

JAN 17 1979

Jack C. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Judgment having been entered in the above case
and the case being finalized,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
the United States Court Clerk return to the respective parties
all remaining exhibits in his possession.

Allen E. Brown

U.S. DISTRICT JUDGE

I received Plaintiff's Exhibit #1 introduced in the trial of this case,
CONTAINING IN AN ^{EVIDENCE} ENVELOPE, ONE WHITE
ENVELOPE CONTAINING A RED BALLOON
AND ONE JAR CONTAINING A BROWN
POWDER ^{IN A TIN FOIL BUNDLE} THE JAR MARKED "68-646".

Kenneth P. Sample, Atty. Gen.

1-18-79

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ELI ELLIS GILBERT, JR.,

Defendant.

No. 70-CR-26

FILED

JAN 17 1979

Jack G. Silver, Clerk
U. S. DISTRICT COURT

O R D E R

Judgment having been entered in the above case
and the case being finalized,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
the United States Court Clerk return to the respective parties
all remaining exhibits in his possession.

Allen E. Baranoff

U.S. DISTRICT JUDGE

I received all Plaintiff's exhibits introduced in the trial (all
contained in one manila envelope). #1-104

*Received by J. Silver, AUSA
1-18-79*

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 15 1979

United States of America,)
v.)
RONALD EDWARD WEEKS)

NO. 76-CR-136-B

Jack C. Silver, Clerk
U. S. DISTRICT COURT

REVOCATION OF PROBATION

On November 23, 1976, came the attorney for the Government and the defendant appeared in person and by counsel, Gary M. McSpadden,

IT WAS ADJUDGED that the defendant, upon his plea of guilty had been convicted of having violated Title 18, U.S.C., Section 371, as charged in the Indictment.

IT WAS ADJUDGED that the defendant was guilty as charged and he was convicted.

IT WAS ADJUDGED that the defendant was committed to the custody of the Attorney General for a period of sixty (60) months on the condition that the defendant be confined in a jail-type institution for a period of six (6) months, the execution of the remainder of the sentence of imprisonment suspended and the defendant placed on probation for fifty-four (54) months. The condition of probation was that the defendant make restitution in the amount of \$960.00 to the Court Clerk in payments of \$20.00 a month, beginning the first month after release from the institution.

On the 11th day of January, 1979, came the attorney for the Government, and the defendant appeared in person and with counsel Barry Heaver. It being shown to the Court that the defendant had violated the terms and conditions of said probation,

IT WAS ADJUDGED that the Order for probation entered November 23, 1976, be revoked and set aside, and final disposition was continued to 10:00 a.m. the 12th day of January, 1979.

Now, on this 15th day of January, 1979, the defendant showing to the Court that he has made full restitution, the Court finds that probation should be and it is hereby reinstated and extended for one (1) additional year.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Allen F. Baman

CHIEF JUDGE, UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEFENDANT

RUDOLPH J. DONATI, JR.

DOCKET NO. 77-CR-75

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH DAY YEAR 1 12 79

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Charles H. Froeb, Court Appointed

(Name of counsel)

FILED

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

JAN 1 2 1979

Jack C. Silver, Clerk
U. S. DISTRICT COURT

FINDING & JUDGMENT

There being a finding of

NOT GUILTY. Defendant is discharged

GUILTY.

Defendant has been convicted as charged of the offense(s) of having violated Title 26, U.S.C., Section 5861(d) and Section 5871, as charged in the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that

The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of Three and one-half (3 1/2) Years from this date.

SPECIAL CONDITIONS OF PROBATION

In addition to the general conditions of probation, the defendant is to follow an alcohol treatment program as directed and counseled by the Probation Department.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

H. DALE COOK

U.S. Magistrate

Date 1-12-79

By

() CLERK

() DEPUTY

DEFENDANT

NORTHERN DISTRICT OF OKLAHOMA

PATRICIA MAE ABERCROMBIE

DOCKET NO.

78-CR-137-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government
the defendant appeared in person on this date ____

MONTH	DAY	YEAR
1	11	79

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

X WITH COUNSEL

CURTIS PARKES Ret.

(Name of counsel)

FILED

PLEA

X GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/~~verdict~~ of

 NOT GUILTY. Defendant is discharged

GUILTY.

Defendant has been convicted as charged of the offense(s) of **having violated Title 18, U.S.C., Section 656, as charged in the Information.**

FINDING & JUDGMENT

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~XXXXXXXXXXXX~~
~~XXXXXXXXXXXX committed to the custody of the Attorney General of the State of Tennessee for imprisonment.~~

Counts 1,2,3,4,5 & 6 - The imposition of sentence is suspended and the defendant is hereby placed on unsupervised probation for a period of Two (2) years as to each count. Counts 2,3,4,5 & 6 to run concurrently with probation in Count 1.

**SENTENCE
OR
PROBATION
ORDER**

**SPECIAL
CONDITIONS
OF
PROBATION**

**ADDITIONAL
CONDITIONS
OF
PROBATION**

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

 U.S. District Judge

XXXXXXXXXXXX

☐ U.S. Magistrate

Date **1-11-79**

By _____

() CLERK

() DEPUTY

DEFENDANT

BETTY JEAN WEBB

DOCKET NO.

78-CR-124-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH 1 DAY 11 YEAR 79

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Van H. Eden, Appt.

(Name of counsel)

FILED

JAN 11 1979

Jack C. Silver, Clerk
U. S. DISTRICT COURT

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

There being a finding/verdict of

NOT GUILTY. Defendant is discharged

GUILTY.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Sections 1708 and 495, as charged in Counts 1,2,3,4 & 5 of the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Count 1 - Eighteen (18) months.

Counts 2,3,4 & 5 - The imposition of sentence is suspended and the defendant is placed on probation for a period of Five (5) years as to each count, upon release from incarceration. Counts 3,4 & 5 to run concurrently with probation imposed in Count 2.

SPECIAL CONDITIONS OF PROBATION

The special condition of probation in Count 2 is that the defendant make restitution in the amount of \$531.00, to the Court Clerk for payment to the U. S. Treasury. Payments to begin the first month after release from institution in payments of \$10.00 a month until paid in full.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

SIGNED BY

U.S. District Judge

BY

U.S. Magistrate

Date

1-11-79

() CLERK

() DEPUTY

DEFENDANT

JOSE DONOVAN VALLEJO

DOCKET NO.

78-CR-131-B

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (5/75)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

MONTH DAY YEAR
1 8 79

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Robert S. Lowery, Appt.

(Name of counsel)

FILED

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

JAN 8 1979

FINDING & JUDGMENT

There being a finding of

NOT GUILTY. Defendant is discharged

GUILTY.

Jack C. Silver, Clerk
U. S. DISTRICT COURT

Defendant has been convicted as charged of the offense(s) of having violated Title 8, U.S.C., Section 1324(a)(2), as charged in the Indictment.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Thirty-six (36) months, and on the condition that the defendant be confined in a jail type institution for period of four (4) months, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is placed on probation for thirty-two (32) months.

IT IS FURTHER ADJUDGED that the defendant receive credit for time served.

SPECIAL CONDITIONS OF PROBATION

IT IS FURTHER ADJUDGED that during incarceration, the defendant will be scheduled, by the Probation Office, to work two (2) days a week at some charitable institution and returned to institution at the end of each day.

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON

THIS DATE

U.S. District Judge

By

() CLERK

() DEPUTY

U.S. Magistrate

Date

1-8-79

JAN 5 1979

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
v. Plaintiff,)
) NO. 78-CR-110-B
)
VERNON JOHN LANE, et al.,)
)
Defendants.)

O R D E R

The Court has for consideration a motion pursuant to Rule 35, Federal Rules of Criminal Procedure, seeking modification of the sentence of Vernon John Lane, timely filed by counsel on Defendant's behalf.

Having carefully studied the motion, reviewed the file, and reflected on the sentence imposed December 14, 1978, the Court, being fully advised in the premises, finds that the motion should be granted and the sentence modified. Although the original sentence was pursuant to the Youth Corrections Act, 18 U.S.C. § 5010(b), as a young adult offender within the purview of 18 U.S.C. § 4216, under the circumstances now known to the Court, he will not derive maximum benefit from treatment under 18 U.S.C. § 5010(b).

IT IS, THEREFORE, ORDERED that the Judgment and Sentence against Vernon John Lane entered herein on December 14, 1978, be and it is hereby modified to the following:

The Defendant, Vernon John Lane, is hereby committed to the custody of the Attorney General or his authorized representative for a period of two (2) years, regular adult sentence, and it is recommended that said sentence shall run concurrently with the sentence imposed December 27, 1978, in Case No. CRF-78-2882, by the District Court of Tulsa County, Oklahoma.

Dated this 5th day of January, 1979, at Tulsa, Oklahoma.

Allen J. Burton
CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA

FILED

JAN 5 1979 10

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

v.

SALLY FAY BURCH GARDNER,

Defendant.

NO. 78-CR-120-B ✓


O R D E R

The Court has for consideration a motion pursuant to Rule 35, Federal Rules of Criminal Procedure, timely filed by counsel on behalf of the Defendant, Sally Fay Burch Gardner.

Having studied the motion, carefully reviewed the file, and reflected on the sentence, the Court, being fully advised in the premises, finds that under the circumstances before the Court the sentence imposed was lenient and proper. The motion for modification of sentence should be denied.

IT IS, THEREFORE, ORDERED that the motion for discretionary modification of the sentence of Sally Fay Burch Gardner be and it is hereby overruled.

Dated this 5th day of January, 1979, at Tulsa, Oklahoma.


CHIEF JUDGE, UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF
OKLAHOMA